

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

NOV 6 2017

UNITED STATES DISTRICT COURT

for the

District of NewMATTHEW J. DYKMAN
CLERKMexico Division

Case No.

17 CV 1107 WPJ/LF

(to be filled in by the Clerk's Office)

Star Joseph

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

MTC Corporation (Corrections)MTC Otero County Prison Facility

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

*Star Joseph*All other names by which
you have been known:*N/A*

ID Number

91631051

Current Institution

MTC Otero County Prison Facility

Address

*10 McGregor Range Road
Chaparral**NM**88081*

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

*MTC Corporation
(Corrections)*Job or Title (*if known*)*N/A*

Shield Number

N/A

Employer

*500 North Marketplace drive
Centerville**Utah**84014*

City

State

Zip Code

Individual capacity

Official capacity

Defendant No. 2

Name

*MTC Otero County Prison Facility*Job or Title (*if known*)*N/A*

Shield Number

N/A

Employer

MTC Corporation (Corrections)

Address

*10 McGregor Range Road
Chaparral**NM**88081*

City

State

Zip Code

Individual capacity

Official capacity

Defendant No. 3

Name N/AJob or Title (*if known*)

Shield Number

Employer

Address

City

State

Zip Code

 Individual capacity Official capacity

Defendant No. 4

Name N/AJob or Title (*if known*)

Shield Number

Employer

Address

City

State

Zip Code

 Individual capacity Official capacity**II. Basis for Jurisdiction**

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (*check all that apply*):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

As a prisoner I have the rights to be protected, the right to be free from harm and the right to not be put in harms way. I am claiming that MTC Corp. and MTC OCPF violated these rights.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

N/A

D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

MTC Otero County Prison Facility employees and staff displayed gross negligence by failing to render aid while the assault was visible to guards in guard booth and cameras. MTC staff displayed deliberate indifference because I am african-american and was being assaulted by only caucasian and hispanic inmates.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced state prisoner

Convicted and sentenced federal prisoner

Other (explain)

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

N/A

B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

MTC Otero County Prison Facility, South Charley Pod, Aug 24th, 2017, 10:45 pm

C. What date and approximate time did the events giving rise to your claim(s) occur?

August 24th, 2017 approximately 10:45pm

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

On August 24th, 2017 at approx. 10:45pm I was physically attacked by 10-15 inmates in South Charley Pod on the ground floor-tier of MTC Otero County Prison Facility. The incident started when I was standing in line to use the microwave and noticed a group of inmates looking in my direction. I continued looking in their direction then one of the inmates stated "What are you staring at nigger?" I walked up to the group of inmates and stated "I don't appreciate being called that." After I said that I proceeded to walk... (cont. on additional page for Item D.)

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Injuries Include: head trauma, possible concussion, extensive bruising to side and back of skull, neck, spine, ribs, upper and lower back.

2 Broken bones in the mid-lower back L6 and L7 bones.

Post-traumatic Stress - I am experiencing nightmares and flashbacks of the assault which have made it difficult to fall asleep and stay asleep. Experiencing thoughts of suicide since the assault.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I am requesting that MTC Corporation and MTC Otero County Prison Facility accept liability for relief and punitive damages for past and future medical related expenses in relation to pain and suffering I am and am continuing to experience. Due to back injuries and post-traumatic stress for the relief sum of (\$300,000). I am also requesting a relief of (\$400,000) for the loss of lively hood I will experience, I work construction and due to back and post-traumatic stress injuries my ability to perform physical labor may not be possible. I am asking the court to grant a total relief of (\$700,000).

Additional Page for Item D on page 5 of 11

back in the direction of the microwave when a few of the inmates stepped in front of me and said "oh, he thinks he's bad, lets fuck this nigger up." At that point all 10-15 inmates physically attacked me by punching me repeatedly in the head, neck, back, stomach, and ribs. I fell down to the floor at which point all 10-15 inmates began kicking me repeatedly in the head, neck, back, stomach, ribs, legs and stomping on my head, neck, upper and lower back repeatedly at which point I lost consciousness. At no time during or after the physical assault did any members of MTC Otero County Prison Facility Staff or Correctional Officers on duty enter the South Charley Pod to intervene or stop the assault. The physical assault took place directly across from the glass windowed master control guard booth and the entire incident was filmed on camera. During the last count at 11:00pm one of the correctional officers noticed that I was seriously injured and in need of immediate medical attention. I was escorted to MTC medical unit where pictures were taken of all my injuries. At that time my body went into shock and I was placed in a wheel chair and rushed to University Medical Center of El Paso.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), requires that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes

No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

NTC Otero County Prison Facility

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

Yes

No

Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

Yes

No

Do not know

If yes, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes

No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes

No

E. If you did file a grievance:

1. Where did you file the grievance?

*MTC Otero County Prison Facility
10 McGregor Range Road Chaparral, New Mexico 88081*

2. What did you claim in your grievance?

I claimed MTC Corp. and Otero County Prison Facility employees and officers were grossly negligent by failing to render aid and showed deliberate indifference because I am african-american. I asked for a total relief of \$700.00 for my injuries.

3. What was the result, if any?

MTC Corp. and Otero County Prison Facility have not responded to any of the grievances or informal complaints I have filed. They have not returned my informal complaints making it impossible to continue the grievance process.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I have continued to file informal complaints but continue to receive no response from MTC - Otero County Prison Facility. attached is a record of all the complaints and grievances I have filed Cont...

Additional Page for Item E. #4 for page 7 of 11

Grievance and Complaint Record.

September 29th, 2017 : filed at MTC OCPF

- 1 Grievance to Administration for punitive relief from assault.
- 1 Grievance to Medical to be put back on Ibuprofin for pain.

October 2nd, 2017 : filed at MTC OCPF

- 1 Informal Complaint for punitive relief from assault.
- 1 Informal Complaint to be put back on Ibuprofin pain.

Oct. 19th 2017 : filed at MTC OCPF

- 1 Informal Complaint for punitive relief from assault.
- 1 Informal Complaint for Med to be put back on Ibuprofin.

Oct. 30th 2017 : filed at MTC OCPF

- 1 Informal Complaint to Admin for not answering last complaint
- 1 Informal Complaint to Admin for punitive relief from assault.
- 1 Informal Complaint to Med for pain Medicine for back.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

I am and will continue to file informal complaints to MTC OCPF in hopes that they will respond so that I can exhaust the grievance procedure. attached are Exhibits 1+2 which are informal complaints that werent responded to and Exhibit 3 which is a medical request that denied pain medication for injuries.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

Yes

No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (*If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.*)

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court (*if federal court, name the district; if state court, name the county and State*)

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition.

N/A

7. What was the result of the case? (*For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?*)

N/A

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Yes No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court (if federal court, name the district; if state court, name the county and State)

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition

N/A

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

N/A

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10/30/2017

Signature of Plaintiff

Star Joseph

Printed Name of Plaintiff

Star Joseph

Prison Identification #

91631051

Prison Address

10 McGregor Range Road

Chaparral

NM

88081

Zip Code

City

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

Exhibit 1Form CD-150501.3
Revised 03/31/15 Page 1

NEW MEXICO CORRECTIONS DEPARTMENT

INMATE INFORMAL COMPLAINTInmate Name: Star Joseph NMCD#: 91631051 Date: OCT 04 2017Facility: Otero County Prison Facility HU/Cell #: SHU cell 14 Date of Incident: 08/24/2017Name of subject or person to whom the complaint was filed against: MTC Corporation (Corrections)
and Otero County Prison FacilityExplain your complaint in detail: On August 24th at approx. 10:45 pm I was physically assaulted by 10-15 inmates in South Charley Housing Unit. I suffered serious injuries that will affect me for the rest of my life. Two broken bones in my back L6, L7. I am experiencing mental health issues since the assault. During the assault, no MTC staff or OTCRF guards entered the pod or tried to stop the assault. The assault happened directly in front of the guard booth and was caught on camera. MTC staff failed to render aid, wereInmate Signature: Star Joseph Date: 10/02/2017
grossly negligent and showed deliberate indifference. I am requesting relief from MTC Corp. and OCPF of \$300,000.00 and future medical expenses and pain and suffering up to \$400,000 for loss of / lively hood & possibly permanent mental disabilities.Unit Manager/Chief of Security/Designee For a total relief of \$700,000.

Date Received: _____

I, _____ have reviewed the above informal complaint and

I, _____ Unit Manager/Chief of Security/Designee
Recommend: _____ () Resolution () Recommend formal grievanceExplain: _____

_____Staff Member: _____ / Date: _____
Print / Sign _____Acknowledged by the signatures below, this informal complaint is: Resolved UnresolvedUnit Mgr/Chief of Security/Designee: _____ / Date: _____
Print / Sign _____Staff Witness: _____ / Date: _____
Print / Sign _____Inmate: _____ / Date: _____
Print / Sign _____If this informal complaint could not be resolved, the inmate may pursue a formal grievance within 5 working days of the date of resolution.At time of resolution-the inmate must be given a copy of the completed copy of the Informal ComplaintInmate must attach this document if the formal grievance is to be submitted.

Exhibit 2

NEW MEXICO CORRECTIONS DEPARTMENT

INMATE INFORMAL COMPLAINT

OCT 04 2017

Inmate Name: Star Joseph NMCD#: 91631051Facility: Otero County Prison Facility HU/Cell #: SHU cell 14 Date of Incident: 09/12/17Name of subject or person to whom the complaint was filed against: MTC Medical / OCPF
Otero County Prison FacilityExplain your complaint in detail: On August 14 I was physically attacked. I was seriously injured. I have 2 broken bones in my back, bruised ribs, bruises to my neck, spine, skull. I went to University Medical Center of El Paso. I was prescribed Ibuprofin for pain. After six days MTC medical staff stopped giving me the Ibuprofin. I asked to be put back on it because I am in extreme pain. The MTC medical staff said no but gave me muscle relaxers which are not helping. I have been in pain now for almost 3 weeks with no relief.Inmate Signature: Star Joseph Date: 10/02/2017

Unit Manager/Chief of Security/Designee

Date Received: _____

I, _____ have reviewed the above informal complaint and

Unit Manager/Chief of Security/Designee () Resolution () Recommend formal grievance

Recommend: _____ Explain: _____

Staff Member: _____ / Date: _____

Print / Sign

Acknowledged by the signatures below, this informal complaint is: Resolved Unresolved

Unit Mgr/Chief of Security/Designee: _____ Date: _____

Print / Sign

Staff Witness: _____ Date: _____

Print / Sign

Inmate: _____ Date: _____

Print / Sign

If this informal complaint could not be resolved, the inmate may pursue a formal grievance within 5 working days of the date of resolution.At time of resolution-the inmate must be given a copy of the completed copy of the Informal ComplaintInmate must attach this document if the formal grievance is to be submitted.

MTC

Exhibit 3

Medical

Sick Call Request

Facility: Otero County Prison Facility

NSC #

Date/Time: 09/08/2017 6:30 pm

Patient Name: Star Joseph

Patient #

Allergies to Medication NA

Housing Unit/Bed/Bunk SHU - cell - 14

Current Medications Ibuprofin

Reason for Medical Assistance: Can I please be put back on my pain prescription for my back. I'm in a lot of pain at night and in the mornings.

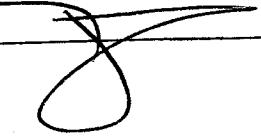
How long have you had this problem? Hours: 5 days Days: 5 days

Patient Signature: Star Joseph

Date/Time: 09/08/2017

DO NOT WRITE BELOW THIS LINE

Date/Time Received:

Disposition: Nurse Sick Call Doctor Sick Call Mental Health Dental Pill Call AdminUrgency: Immediate Same Day Visit RoutineMedical Reply or N/AIssue Addressed in MP
9/12/17Medical Staff Signature: 

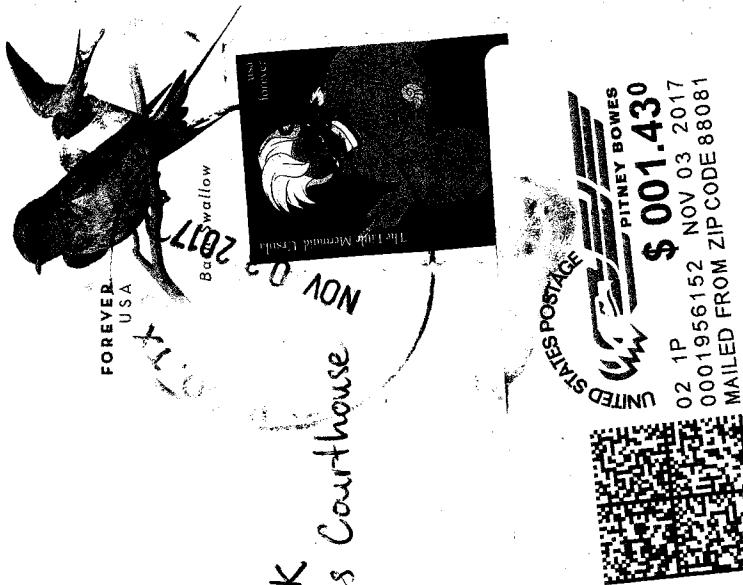
Date/Time Responded:

Star Joseph #91631051
OCPF - RTU 2 - cell 14
10 McGregor Range Road
Chaparral, New Mexico
88081

United States District Court
District of New Mexico
Matthew J. Dykman, CLERK
Pete V. Domenici United States
222 1/2 Plaza NW

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NOV 06 2017
MATTHEW J. DYKMAN CLERK
Pete V. Dome
333 Lowes
Suite 270
Albuquerque
NM 87102 - 981

MATTHEW J. DYKMAN, Clerk of the Court, Albuquerque, New Mexico
87102-9843



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